

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

CYNTHIA TURNER	§	
and MICHAEL TURNER	§	
	§	
V.	§	CIVIL ACTION NO. G-12-082
	§	
TEXAS FARMERS INSURANCE	§	
COMPANY	§	

OPINION AND ORDER

Before the Court is the Motion for Summary Judgment of Defendant, Texas Farmers Insurance Company (Texas Farmers). The Motion has been fully briefed and is ripe for determination.

The facts relevant to the disposition of the Motion are few. The home of Plaintiffs, Michael¹ and Cynthia Turner, was damaged during Hurricane Ike. Their home was insured by Texas Farmers under a Standard Flood Insurance Policy (SFIP). The Turners submitted a Proof of Loss for flood damages in the amount of \$207,940.94, and Texas Farmers ultimately paid that Proof of Loss in full. On February 13, 2012, the Turners demanded an additional amount of almost \$193,000.00, but Texas Farmers refused to pay any more benefits. On March 16, 2012, the Turners sued Texas Farmers for breach of contract and sought the additional benefits under their SFIP, however, the Turners, unfortunately, never submitted another written and sworn Proof of Loss to Texas Farmers. Settlement negotiations occurred, but reached an impasse. Texas Farmers, therefore, filed the instant Motion.

¹ Michael Turner passed away while this suit was pending.

As inequitable and punitive as it may seem, the law is clear: a lawsuit for additional insurance benefits under an SFIP cannot be legitimately pursued unless the insured strictly complies with all of the policy's requirements, including the submission of a Proof of Loss for the additional benefits being sought. Marseilles Homeowners Condominium v. Fidelity National Insurance Company, 542 F.3d 1053, 1056 (5th Cir. 2008) The Turners' failure to submit an additional Proof of Loss is fatal to their breach of contract claim.

The Turners proposed equitable estoppel is not cognizable against a WYO carrier like Texas Farmers. Wright v. Allstate Insurance Co., 415 F.2d 384, 387-389 (5th Cir. 2005)

It is, therefore, **ORDERED** that the "Motion for Summary Judgment" (Instrument no. 20) of Defendant, Texas Farmers Insurance Company, is **GRANTED** and the Original Complaint of Plaintiffs, Michael and Cynthia Turner, is **DISMISSED in its entirety**.

DONE at Galveston, Texas, this 3rd day of July, 2013.



John R. Froeschner
United States Magistrate Judge